U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF J-K-A-

DATE: SEPT. 29, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a medical teaching assistant and research assistant volunteer, seeks classification as a member of the professions holding an advanced degree. *See* section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver (NIW) of the job offer requirement that is attached to this EB-2 immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had not demonstrated the necessary track record to warrant a waiver of the job offer requirement.

The matter is now before us on appeal. In his appeal, the Petitioner submits two new reference letters and discusses his area of research.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate his or her qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required to confirm that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will

> substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
>
> (B) Waiver of Job Offer –
>
> > (i) Subject to clause (ii), the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.[1]
> >
> > (ii)(I) The Attorney General shall grant a national interest waiver pursuant to clause (i) on behalf of any alien physician with respect to whom a petition for preference classification has been filed under subparagraph (A) if –
> >
> > > (aa) the alien physician agrees to work full time as a physician in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs; and
> > >
> > > (bb) a Federal agency or a department of public health in any State has previously determined that the alien physician's work in such an area or at such facility was in the public interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Matter of New York State Dep't of Transp., 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must confirm that the national interest would be adversely affected if a labor certification were required by establishing

[1] Pursuant to section 1517 of the Homeland Security Act of 2002 ("HSA"), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA "shall be deemed to refer to the Secretary" of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner's assurance that he or she will, in the future, serve the national interest cannot suffice to demonstrate prospective national benefit. *Id.* at 219. Rather, a petitioner must justify projections of future benefit to the national interest by establishing a history of demonstrable achievement with some degree of influence on the field as a whole. *Id.* at 219, n.6.

II. ANALYSIS

The Petitioner received his Bachelor of Medicine and Bachelor of Surgery from the in February 2009 and in 2012 obtained his certification from the He received a Master of Public Health from the at in 2012, with a concentration in epidemiologic and biostatistical methods for public health and clinical research. At the Petitioner completed a surgical faculty mentoring program. The Director correctly concluded that the Petitioner is a member of the professions holding an advanced degree. The remaining element is whether waiving the labor certification requirement is in the national interest. The record supports the Director's finding that the Petitioner works in an area of substantial intrinsic merit, health research. In addition, the proposed benefits of medical and health research are national in scope. The issue on appeal is whether the Beneficiary's past record justifies projections of future benefit to the national interest. *NYSDOT*, 22 I&N Dec. at 219. In assessing this question, we look at whether the Petitioner has a past history of demonstrable achievement with some degree of influence on the field as a whole. *Id.* at 219 n.6.

Evidence supporting the petition includes the Petitioner's curriculum vitae; credentials; ETA Form 750B, Application for Alien Employment Certification; a published article; a personal statement; reference letters; and corroboration of his citations and presentations. On his curriculum vitae, the Petitioner specified that he had worked as a research assistant at from October 2012 through January 2013 and as a volunteer at clinical trials center at that institution as of July 2012. On the ETA 750B, the Petitioner indicated that he was working as a teaching assistant at

All of the reference letters are from the Petitioner's colleagues at or an entity affiliated with that institution. We have considered all of these letters, including those not specifically discussed in this decision. At the outset, several letters characterize the Petitioner as exceptional and explain the importance of his area of research. The classification for foreign nationals with exceptional ability requires a job offer and labor certification. Section 203(b)(2) of the Act. Accordingly, exceptional ability alone does not warrant a waiver of that requirement. *NYSDOT*, 22 I&N Dec. at 218-19. In addition, the Petitioner cannot demonstrate eligibility for the waiver based solely on the importance of his occupation. *Id.* at 217. Finally, some letters discuss his

academic achievements. Such performance cannot alone satisfy the national interest threshold. *Id.* at 219, n. 6.

the Petitioner's professor and mentor at discusses the Petitioner's thesis project in which he "researched an advanced tool" that uses computerized clinical decision support and computer order entry. He linked this tool to outcomes for prophylaxis prevention of venous thromboembolism (VTE) in an outcomes database run by the envisions that the Petitioner's means of reporting VTE harm "would encourage surgeons and hospitals to offer patients who undergo surgery with the most appropriate prophylaxis." notes that the published the study and concludes that it "has the potential to influence how hospitals in the United States" report VTE cases after surgery. does not suggest that any hospital is already changing its reporting policies or otherwise applying this work. The record reflects this article garnered two[2] citations, both of which are from the Petitioner's coauthors. On appeal, an assistant professor at states that this work formed the basis for four additional papers. He does not indicate who authored these articles. While a small number of citations and a lack of independent citations do not preclude a waiver, it remains the Petitioner's burden to corroborate his influence.

an associate professor at affirms that the Petitioner volunteered on ongoing research projects. Specifically, he discusses the Petitioner's work comparing emergency pediatric surgery results in the United States on weekends with those on weekdays. While concludes that this project "would broaden the knowledge on outcomes in pediatric surgery," he does not address the results or how they have already influenced pediatric surgery. Finally, describes another study looking at the age of presentation for certain pediatric conditions, but acknowledges that the Petitioner had yet to disseminate this work in the field.

founder of the explains that it is a nonprofit affiliated with that builds capacity in academic surgery in low and middle income countries. indicates that the Petitioner served as a fellow with the foundation in 2013 where he looked at the geographic distribution of colorectal screening and treatment, finding that rural patients are more likely to present at advanced stages. He states that the Petitioner "calls for proper distribution of doctors involved in screening for colon cancer . . . as well as those treating it." notes that the Petitioner had published an abstract of this study and that a journal had accepted the full article for publication. describes another study whose results were under review for publication and concludes that the Petitioner has "tremendous promise through his publications which has far reaching national importance to the United States with enormous economic benefits." In a subsequent letter on appeal, he notes that the Petitioner's full article on colon cancer screening distribution has been published. While letters confirm that the

[2] The Director concluded that there were three citations, which the Petitioner repeats on appeal. The record, however, documents only two. Regardless, these numbers are not meaningfully different.

Petitioner's research is in an important area and has been disseminated, they do not detail applications of his studies by others in the field.

In summary, the record shows the Petitioner is a public health researcher who has earned the respect of his mentors and colleagues and has disseminated some of his studies through conferences or publication. That his work is within an important area and may have applications in the future, however, is an insufficient basis for the waiver of the job offer. The Petitioner did not establish that he has had a degree of influence on the field as a whole.

III. CONCLUSION

The burden is on the Petitioner to show eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The Petitioner in this case has not established by a preponderance of the evidence that his past record of achievement is at a level sufficient to waive the job offer requirement which attaches to the visa classification sought by the Petitioner. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of J-K-A-*, ID# 8760 (AAO Sept. 29, 2016)